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The Growth Management Pendulum: The Ecological Clock is Ticking for Florida and Other States

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I. INTRODUCTION

Conservation is getting nowhere because it is incompatible with our Abrahamic concept of land. We abuse land because we regard it as a commodity belonging to us. When we see land as a community to which we belong, we may begin to use it with love and respect. There is no other way for land to survive the impact of mechanized man, nor for us to reap from it the esthetic harvest it is capable, under science, of contributing to culture. That land is a community is the basic

> concept of ecology but that land is to be loved and respected is an extension of ethics . . . .[1]

Indifference has the potential for placing growth management on the cusp of catastrophe. Growth management is a land use control approach that aspires to govern the character, rate, and site of growth and development.[2] The primary purpose of growth management in Florida is to balance the influx of individuals pouring into the state with the vital need to protect natural resources.[3] The term growth management is interchangeable with ecosystem management in the context of environmental protection.[4] An ecosystem is defined as "[a]n ecological community together with its environment, functioning as a unit."[5] Therefore, a key component of growth management is the necessity for local governments to establish land use patterns and intensities that are consistent with the protection of wildlife habitats.[6]

Part II of this article analyzes Florida's growth management background, and how this state established important precedents in the early 1970s. Florida's ability to maintain effective growth management has been attributed to factors such as citizen support, political and administrative guidance, and "[t]he state's growth management watchdog group, 1000 Friends of Florida."[7] However, the state must maintain vigilance and continually persist in struggling for new sources of revenue so a cohesive and balanced infrastructure can be sustained.[8]

Part III explains the concept of concurrency as it relates to traffic congestion and overcrowding of schools. The human factor is paramount. Attention should be given in devising sound plans to effectively utilize

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1. LUTHER J. CARTER, THE FLORIDA EXPERIENCE: LAND AND WATER POLICY IN A GROWTH STATE 337-38 (1974) (quoting ALDO LEOPOLD, A SAND COUNTY ALMANAC *x* (Oxford Univ. Press 1966)). Aldo Leopold was one of the Wilderness Society organizers and the founder of scientific wildlife management in the United States. *Id.* at 200.

2. Quintin Johnstone, *Government Control of Urban Land Use: A Comparative Major Program Analysis*, 39 N.Y.L. SCH. L. REV. 373, 416 (1994). Although growth management resembles zoning, it relies more on comprehensive planning and significant direction by state governments. *Id.*

3. John M. DeGrove, *State and Regional Planning and Regulatory Activity: The Florida Experience and Lessons for Other Jurisdictions*, C930 A.L.I.-A.B.A. 397, 427 (1994).

4. Interview with Richard Grosso, Legal Director of 1000 Friends of Florida, in Fort Lauderdale, Fla. (July 12, 1995).

5. THE AMERICAN HERITAGE COLLEGE DICTIONARY 435 (3d ed. 1993).

6. Interview with Richard Grosso, *supra* note 4.

7. DeGrove, *supra* note 3, at 448.

8. *Id.* at 449.

concurrency requirements as a growth management tool in Florida and other states.

Part IV focuses on the connection between the Endangered Species Act ("ESA") and, more specifically, Florida's legal requirements under growth management. The ESA ensures the continued existence of threatened or endangered species by conserving "the ecosystems upon which . . . [they] depend."[9] This section will also discuss North Key Largo, Florida, which contains the highest concentration of listed endangered species.[10] A unique program established by the state for the continued survival of the Key Deer, found predominantly on Big Pine Key, will be examined.

Part V discusses the Environmental Protection Agency ("EPA") and the United States Army Corps of Engineers ("COE"), regarding their attempts to safeguard and manage Florida's prevailing wetlands. Advance identification ("ADID"), which permits the EPA to gather data on the inherent value of wetlands, in cooperation with the COE and the state, is examined. Information gleaned from such studies is of merit to the community, local governments, environmental organizations, and conservation groups in taking preventative measures and in planning for the future.[11] For example, benefits may be conferred respectively upon project planning, land-use management, and wetland protection activities.[12] The concepts of cumulative and secondary impacts[13] are also discussed as they relate to the future of wetland protection and conservation.

The growth management statutes of Oregon and Vermont are the central focus of Part VI. This section also investigates how Florida fashioned its growth management statutes after both the Oregon and the Vermont models. While Florida and Vermont fall under the Model Land Development Code ("MLDC") for state growth management regulation, Oregon functions as the leading example for the "Planning Consistency" model ("PC").[14]

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9. 16 U.S.C. § 1531(b) (1994).

10. Interview with Richard Grosso, *supra* note 4.

11. Eric Hughes, The Role of Planning in Wetland Permitting: Advanced Identification, Special Area Management Plans, State Wetland Management Plans 1.1 (Dec. 1993) (unpublished manuscript, on file with the Environmental and Land Use Law Section Public Interest Representation Committee).

12. *Id.*

13. *See infra* note 194 and accompanying text.

14. James H. Wickersham, *The Quiet Revolution Continues: The Emerging New Model for State Growth Management Statutes*, 18 HARV. ENVTL. L. REV. 489, 490 (1994).

Part VII explores other states that have passed growth management statutes based on the PC model. They include Georgia,[15] Maine,[16] Maryland,[17] New Jersey,[18] Rhode Island,[19] and Washington.[20] This article concludes by reiterating the importance for involvement in growth management at all levels of government. For example, private individuals must also aid the government in the process of implementing land-use plans. In summary, growth management must balance the rights of landowners with the numerous threatened species, the primary reason behind the ESA.

II. A HISTORICAL ANALYSIS OF FLORIDA'S GROWTH MANAGEMENT

Florida's natural environment has undergone a significant metamorphosis with individuals manipulating the land to make it more desirable for colonization.[21] As a result, mangrove flats and salt marshes were frequently saturated and enveloped within seawalls.[22] Interior wetlands were depleted in order to build and develop roads, and water in Florida was identified as the "common enemy" in the courts of law.[23] Rivers were "channelized" for controlled navigation and usefulness, and to promote the elimination of flood waters.[24] The environment was otherwise molested through water pollution, the cutting of forests, and degradation of habitat for various species of wildlife who were, in turn, forced into unstable retreats.[25]

Florida has one of the most comprehensive systems for handling rapid growth and development.[26] This system includes involvement from three governmental tiers at the state, regional, and local levels.[27] Together, these governmental entities implement permitting and regulatory programs which

15. GA. CODE ANN. §§ 36-70, 50-8 (1990 & Supp. 1993).

16. ME. REV. STAT. ANN. tit. 30-A, §§ 4311-4344 (West Supp. 1993) (amending and repealing Comprehensive Planning and Land Use Regulation Act, 1989 Me. Laws 104).

17. MD. CODE ANN., STATE FIN. & PROC. §§ 5-701 to 5-7A-02 (Supp. 1993).

18. N.J. STAT. ANN. §§ 52:18A-196 to -207 (West Supp. 1993).

19. R.I. GEN. LAWS § 45-22.2 (1991 & Supp. 1993).

20. WASH. REV. CODE ANN. § 36.70A (West 1991 & Supp. 1993).

21. CARTER, *supra* note 1, at 4-5.

22. *Id.* at 5.

23. *Id.*

24. *Id.*

25. *Id.*

26. David L. Powell, *Managing Florida's Growth: The Next Generation*, 21 FLA. ST. U. L. REV. 223, 227 (1993) [hereinafter Powell, *Managing Florida's Growth*].

27. *Id.*

include land planning, developments of regional impact ("DRIs"), and state supervision of distinctive areas.[28]

The growth problem in Florida did not emanate from a shortage of space for newcomers to the state.[29] Rather, it occurred because these individuals were inclined to inhabit the identical land spaces as previous settlers.[30] The growth problem was exacerbated by steadfast population resulting in overdevelopment of specific areas.[31]

Florida's growth management concerns began in 1970-71 as a result of a serious drought in the Southeast and Tampa Bay areas.[32] Then Governor Reubin Askew arranged for deliberations on water management which necessitated regulation of Florida's growth.[33] Subsequently, the Governor enlisted a task force which presented the following:[34] the Environmental Land and Water Management Act,[35] the Water Resources Act,[36] the State Comprehensive Planning Act,[37] and the Land Conservation Act.[38] A companion law was also proposed which mandated that local governments accept plans approved by the 1975 legislature.[39]

Within a decade, the shortage of capital was evident, thus, it became essential that the cost of Florida's growth management status be evaluated.[40] In 1978, a reappraisal of the system commenced[41] which continued until widespread growth management legislation was enacted by Congress in 1984 and 1985.[42] Upon his election, Governor Bob Graham established a task force on resource management which resulted in the enhancement of section 38.05 of the *Florida Statutes*.[43] This was accomplished by instituting a method "for defining areas of critical state concern . . . [whereby the]

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28. *Id.* at 228.
29. CARTER, *supra* note 1, at 11.
30. *Id.*
31. *Id.*
32. DeGrove, *supra* note 3, at 427.
33. *Id.*
34. *Id.*
35. FLA. STAT. ch. 380 (1995).
36. FLA. STAT. ch. 373 (1995).
37. FLA. STAT. ch. 186 (1995).
38. FLA. STAT. ch. 259 (1995).
39. *See* FLA. STAT. ch. 163 (1975).
40. DeGrove, *supra* note 3, at 427.
41. *Id.* at 428.
42. *Id.*
43. *Id.*

new law, featuring resource planning and management committees, became the state's most effective growth management tool."[44]

Consequently, the Environmental Land Management Study Committee II ("ELMS II") was created.[45] It provided suggestions and a blueprint for Florida's future in growth management.[46] As a result, a second generation of growth management programs were enacted[47] including: the State Comprehensive Plan,[48] the Omnibus Growth Management Act of 1985,[49] and the Florida State and Regional Planning Act of 1984.[50]

In 1986, the "glitch bill" was passed.[51] It specified obligations for assigning concurrency levels of service, consistency requirements for local government plans, and altered windload criteria for the coastal zone.[52] On May 11, 1993, Governor Lawton Chiles signed House Bill 2315[53] into law. All of the provisions contained in the 1993 Act were to serve a function in Florida's future growth management, specifically, in the fields of land, air, water resources, and public utilities.[54]

The state planning system was directed to provide a portion of the State Comprehensive Plan that included the preparation of growth management.[55] Six substantive growth areas recognized in the 1993 Act include: classifica-

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44. *Id.*

45. DeGrove, *supra* note 3, at 428.

46. *Id.*

47. *Id.* at 430.

48. *Id.* This strategic plan focused on the means and ends of achieving goals, as opposed to a traditional plan. *Id.* However, this plan comprised a significant framework and set the stage for the rest of the system. DeGrove, *supra* note 3, at 430.

49. *Id.* The objective of this law was to require the governor's office to provide a state plan which was to be introduced to the 1985 legislature, and for regional planning councils ("RPCs") to furnish comprehensive regional policy plans. *Id.* In turn, the legislature was to allocate funds, in the amount of $500,000, in support of the plan. *Id.* Additional funds were appropriated in order to reinforce the State Land Planning Agency segment of the Department of Community Affairs ("DCA") by expanding the amount of available positions and further monetary functions. *Id.*

50. DeGrove, *supra* note 3, at 430. This law aimed at improving the growth management system through the inclusion of a provision requiring all local governments to prepare new or revised comprehensive plans, in association with the goals of the state and regional plans. *Id.* In doing so, a "critical link" was produced between the state, regional, and local levels, placing Florida in a managerial capacity in terms of growth. *Id.*

51. *Id.* at 432.

52. *Id.*

53. 1993 Fla. Sess. Law Serv. 93-206 (West).

54. Powell, *Managing Florida's Growth*, *supra* note 26, at 233.

55. *Id.* at 238 (citing FLA. STAT. § 186.009 (Supp. 1994)).

tion of urban and metropolitan growth centers[56] and standards for ascertaining favorable future urban growth;[57] recognition of sections of state and regional environmental importance, including the implementation of strategies for preservation;[58] planning policies regarding the state's future transportation infrastructure;[59] effecting policies that positively advance land acquisition programs;[60] establishing priorities in reference to coastal planning resource management;[61] and addressing the demand for affordable housing.[62]

In conclusion, the success of a growth management portion of the State Comprehensive Plan necessitates maintaining a delicate balance among all levels of government.[63] Such intergovernmental coordination also aids in the exchange of information between the various agencies whose jurisdictions and responsibilities may differ.[64] For continuation of future success in growth management, "'[r]egulatory policies must be matched with practical encouragement for economic growth, incentives for particularly desirable types of growth, and strong direction to streamline regulatory approval processes.'"[65]

III. THE GROWING PAINS OF CONCURRENCY

"Defining 'quality of life' . . . [relates to] philosophy and esthetics," however, many individuals fail "to ask the fundamental question: 'What kind of place do we want this to be?'"[66] Aiding in our quest for a utopian society is the concept of concurrency. Concurrency may be defined as a

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56. *Id.* at 243 (citing FLA. STAT. § 186.009(2)(b)).

57. *Id.* (citing FLA. STAT. § 186.009(2)(e)).

58. *Id.* at 244 (citing FLA. STAT. § 186.009(2)(c)).

59. Powell, *Managing Florida's Growth*, *supra* note 26, at 244 (citing FLA. STAT. § 186.009(2)(f)).

60. *Id.* at 244-45 (citing FLA. STAT. § 186.009(2)(g)).

61. *Id.* at 245 (citing FLA. STAT. § 186.009(2)(j)).

62. *Id.* (citing FLA. STAT. § 186.009(2)(h)).

63. *Id.* at 246.

64. Interview with Richard Grosso, *supra* note 4.

65. Powell, *Managing Florida's Growth*, *supra* note 26, at 246 (citing Robert M. Rhodes & Robert C. Apgar, *Charting Florida's Course: The State and Regional Planning Act of 1984*, 12 FLA. ST. U. L. REV. 583, 604 (1984)).

66. David J. Russ, *How the "Property Rights" Movement Threatens Property Values in Florida*, 9 FLA. ST. U. J. LAND USE & ENVTL. L. 395, 395 (1994) (citing Carter, *supra* note 1, at 14).

"land use regulation which controls the timing of property development and population growth."[67]

Concurrency requirements seek to acquire an efficient chain of community growth.[68] This is accomplished by guaranteeing that infrastructure is obtainable upon demand.[69] For example, in order for a developer to construct, the required public services must be readily available.[70] Primary areas of concern entail transportation, water and stormwater management, sewer, solid waste, and parks and recreation.[71]

While the notion of concurrency is wrought with good intentions, there appears to be a catch twenty-two since the more that is built, the greater the number of individuals who will invade the land space. Some perceive growth as decreasing the "quality of life," in that it creates traffic congestion and overcrowding of schools. Therefore, this presents a down-side to growth.

A. *Concurrency in Florida—"Build It and They Will Come"*

Concurrency in Florida acted as the most dominant policy requirement for the 1985 growth management system.[72] This evolved from the extreme proposal that Florida's growth should become a "pay as you grow" system, with infrastructure added to sustain such development.[73] Thus, concurrency has been referred to as the "'teeth' of Florida's growth management system."[74]

Dade County, Florida, has been labeled as the county with the fourth worst traffic congestion problems in the nation.[75] According to a survey of local governments conducted for the Florida League of Cities, seventy-five percent of the respondents classified state roads as currently encounter-

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67. H. Glenn Boggs, II & Robert C. Apgar, *Concurrency and Growth Management: Lawyer's Primer*, 7 FLA. ST. U. J. LAND USE & ENVTL. L. 1, 1 (1991).

68. Wickersham, *supra* note 14, at 510.

69. David L. Powell, *Recent Changes in Concurrency*, 68 FLA. B.J. 67, 67 (Nov. 1994) [hereinafter Powell, *Concurrency*].

70. Wickersham, *supra* note 14, at 510.

71. DeGrove, *supra* note 3, at 434.

72. *Id.*

73. *Id.*

74. Powell, *Concurrency*, *supra* note 69, at 67 (quoting Letter from Thomas G. Pelham, Secretary, Department of Community Affairs, to Senator Gwen Margolis, North Miami Beach 1 (Mar. 7, 1988), *quoted in* DEPARTMENT OF COMMUNITY AFFAIRS, THE EVOLUTION AND REQUIREMENTS OF THE CMS RULE, TECHNICAL MEMO 4 (Aug. 1991)).

75. Greg Jaffe & Christina Binkley, *Growing Pains: Counties Rue the High Price of Success*, WALL ST. J., Jan. 3, 1996, at S1.

ing a facility deficit, or envisioning one at a later date.[76] In attempting to handle traffic problems, transportation acts as the most important focus of Florida's novel concurrency requirements.[77]

As a result, studies were performed to determine "potential refinements of transportation concurrency and additional sources of funding to provide needed facilities."[78] The resulting legislation was amended to include "compromise provisions" founded upon various suggestions by the above studies.[79] Subsequently, in 1993, local governments were permitted by the legislature to employ "a long-term transportation concurrency management system with a planning period of up to 10 years."[80]

The first city in Florida to implement concurrency in the school arena was Coral Springs.[81] The City Commission is scheduled to recommend a plan ordering developers to build an adequate number of schools in order to accommodate the growing number of children moving into the neighborhood.[82] Similarly, such growth management criteria are presently in place regarding various public facilities in the area.[83]

Because school districts are regarded as separate from municipalities, they did not fall under the guise of the 1985 Growth Management Act.[84] Thus, builders suggested that the only pragmatic solution was to impose taxes, paving the way for more schools to be built.[85] Many builders contend that overcrowding is not their fault; rather, they claim the escalating number of births, in addition to immigrants pouring into the state on a daily basis, cause the high student body in the school system.[86]

On September 19, 1995, Broward County voters rejected what was known as the "penny tax," which was to be used for school construction.[87] The proposal was struck down by "an overwhelming vote of no confidence

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76. Powell, *Managing Florida's Growth*, *supra* note 26, at 301.
77. Powell, *Concurrency*, *supra* note 69, at 68.
78. Powell, *Managing Florida's Growth*, *supra* note 26, at 301.
79. *Id.* at 302.
80. Powell, *Concurrency*, *supra* note 69, at 68.
81. Elaine Walker, *Bill: No School Fees Forced on Developers*, MIAMI HERALD, Mar. 20, 1995, at B2.
82. *Id.*
83. *Id.*
84. John Maines, *Builders Say Taxes Are Key: Group Says Schools Need The Money*, SUN SENTINEL, June 29, 1995, at 3B.
85. *Id.*
86. *Id.*
87. *Move On From Penny Tax Defeat, Address Reasons for Its Rejection*, SUN SENTINEL, Sept. 20, 1995, at 12A.

in the school system's leaders, their credibility and their money management skills."[88] Yet, it was suggested that voters must come to the "realiz[ation] that there is no free lunch . . . and that until the tax base is broadened, school property taxpayers will continue to pay the lion's share of the cost."[89]

Since the penny tax was declined, the Broward school district devised a new plan adding a requirement that classroom seats become part of the planning process of concurrency.[90] Developers fear that this would affect new construction. However, new construction would not necessarily be halted until the existing schools become significantly overcrowded.[91] For example, in elementary schools, overcrowding is not considered serious until the capacity reaches 175% or greater. Still, school construction has slowed due to the lack of sufficient revenues.[92] While most builders oppose the plan, the school district maintains that "[t]his is not a building moratorium" since builders may either construct the schools themselves, or provide the land in order for an adequate number of classrooms to be built.[93]

Unfortunately, Florida's public school system has been labeled as having one of the highest dropout rates in the country.[94] Florida's low graduation rate has been attributed to the growing number of students occupying classrooms.[95] For instance, individuals coming from various cultures, speaking different languages, do not have much of an opportunity to excel in a classroom that is significantly overcrowded.[96]

While Scholastic Aptitude Test ("SAT") scores have managed to remain stagnant or escalate somewhat over the last ten years,[97] success on high school exams has diminished.[98] Reports also indicate that over the last three years, fourth graders did twenty percent better on a writing

88. *Id.*
89. *Id.*
90. Lisa Arthur, *Schools Try Again to Link Development, Classrooms*, MIAMI HERALD, Oct. 28, 1995, at 1BR.
91. *Id.*
92. *Id.* at 7BR.
93. *Id.*
94. Ron Wiginton, *Adult Ed: Night School for the '90s*, ORLANDO SENTINEL, Apr. 18, 1993, at G4.
95. *Id.*
96. *Id.*
97. *Id.*
98. Bill Hirschman, *State Issues Report on County Schools: Class Sizes Higher than Florida Average; Test Scores Down in High Schools*, SUN SENTINEL, Dec. 2, 1995, at 1B.

assessment test and five percent better on a nationwide math test.[99] However, students seem to have a problem with absenteeism, which has increased in 1995.[100]

As a result of the problems facing students, Hallandale, Florida, experimented with and implemented a year-round attendance policy.[101] In the summer of 1993, students began to attend classes in split sessions. While some students are on vacation, others are in school.[102] Specifically, the students are given four three-week vacations, alternating among the groups.[103] This means that the rooms are being utilized 220 days of the year, with thirty or fewer students at a time.[104] Even though this attempt at year-round schooling has been quite successful, there are still those parents who oppose the idea.[105] Nevertheless, there may not be much of a choice in areas that are becoming increasingly inhabited. With the influx of ex-Dade residents moving "west" to Broward, areas such as Weston are becoming congested. Although some relief is expected in the fall of 1996, when a new high school will be constructed in Pembroke Pines, Weston students are currently having to undertake courses at Western High School in Davie.[106]

In an attempt to handle the extra class load, Western High School has devised a plan to limit classes to four per semester as opposed to the usual seven.[107] With only four classes, each class session will last longer affording teachers more time for preparing lesson plans.[108] The rationale behind the above proposals should work well in the students' favor by furnishing them with increased individualized attention in the hopes that test scores will be positively affected.

The examples provided indicate that the human factor must be considered in weighing the demand for growth with overcrowding of certain areas. While concurrency seems to furnish an invisible hand in aiding expanding communities, there are those individuals who may have purposely

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99. *Id.*
100. *Id.*
101. *Year-Round Schooling Experiment Gets Results Worth Expanding On*, SUN SENTINEL, Feb. 13, 1995, at 6A.
102. *Id.*
103. *Id.*
104. *Id.*
105. *Id.*
106. Sarah Talalay, *Weston Crowd Demands Answers From School Chief*, SUN SENTINEL, Apr. 7, 1995, at 7B.
107. *Id.*
108. *Id.*

moved into an area for the serenity which is now lost. In the end, future generations will be negatively affected if today's growth is left uncurbed.

B. *Implications of Growth Explosion in Other States*

In Gwinnett County, Georgia, 85,000 students cram into schools constructed for 73,000.[109] School officials fear that residents will follow the lead of Florida's citizens by refusing to foot the bill.[110] Until more schools are built, approximately 500 portable classrooms are being utilized to teach the increasing number of children in Gwinnett County.[111]

In the meantime, it is imperative that states such as Florida and Georgia look to other states which may provide valuable information regarding the management of concurrency. For example, in North Carolina, Dick Ludington formed 1,000 Friends of North Carolina when the population grew by thirty percent from 1970 to 1990.[112] Ironically, this organization was modeled after the one in Florida, as well as ones in Georgia, Massachusetts, and Oregon.[113] However, as Jim Wahlbrink, executive officer of the Homebuilders Association of Raleigh-Wake County noted, "'[i]t created more problems than it solved in Florida' . . . [because] too many decisions were made by people too far away from local issues."[114] Instead, it was suggested that "those decisions . . . [should] be left at the local level."[115] Moreover, "economic development should be used as a tool to good growth . . . [by] attracting appropriate industries and protecting the quality of life."[116]

Another region hit hard with growing student enrollments is Los Angeles, California.[117] Because of overcrowding, thousands of students are bused to schools in other districts.[118] Those close to the problem have blamed busing for the increase in high school dropouts, since travelling to

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109. Jaffe & Binkley, *supra* note 75, at S1.

110. *Id.*

111. *Id.*

112. Sally Hicks, *Group Forms to Help Manage N.C. Growth*, NEWS & OBSERVER, Mar. 11, 1995, at B3.

113. *Id.*

114. *Id.* (quoting Jim Wahlbrink, executive officer of the Homebuilders Association of Raleigh-Wake County).

115. *Id.*

116. *Id.*

117. Elaine Woo, *School Dropouts: New Data May Provide Elusive Clues*, L.A. TIMES, Sept. 11, 1989, at 1.

118. *Id.*

other districts dissuades students who may already be borderline dropouts.[119]

In 1993, the Ventura Unified High School District reported that scores on the verbal portion of the SAT rose by seven points.[120] However, scores on the math portion declined by eighteen points.[121] Again, the slippage in the scores was attributed to overcrowded classrooms, ranging from forty students per class, and to gang violence.[122]

One area aspiring to raise the graduation rate is St. Louis, Missouri.[123] A 1988 report demonstrated that out of ten incoming freshman in the St. Louis public school system, only three will graduate.[124] Due to such staggering numbers, various programs were organized. They included: Continued Education (furnishing pregnant girls with classes in medical care, nutrition, and parenting); Attendance, Attitude and Academics ("Tri-A") (providing an alternative high school atmosphere, concentrating on students with behavioral problems); Adopt-A-Student Program (assigning an adult to act as mentor for students who need a positive role model); and truancy centers (permitting police to fine parents who allow their children to continuously skip classes).[125]

Coloradans also appear to be concerned over the diminishing quality of life.[126] Residents believe that the steadfast rate of new inhabitants will ultimately lead to problems such as crime, higher housing costs, and pollution.[127] However, the number one concern was traffic congestion.[128] In a poll, forty-six percent of Coloradans stated that they would support impact fees on new homes, if they were used for new schools, new highways, and more police officers.[129] In addition, fifty-one percent of

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119. *Id.*

120. Stephanie Simon & Brenda Day, *Ventura Math Scores Drop 18 Points on SAT Education: Verbal Skills Numbers Show Improvement. The District's High Schools Remain Above the State and National Average*, L.A. TIMES, Aug. 19, 1993, at 1.

121. *Id.*

122. *Id.*

123. Virginia Hick, *Schools Trying to Stem High Dropout Rate*, ST. LOUIS POST-DISPATCH, May 24, 1992, at 1A.

124. *Id.*

125. *Id.*

126. Mark Obmascik, *Poll: State Growing Too Fast*, DENVER POST, Jan. 25, 1995, at A01.

127. *Id.*

128. *Id.*

129. *Id.*

Coloradans agreed that a one-cent sales tax on building materials would be beneficial if used for construction of new roads and schools.[130]

The Denver Public Schools released statistics revealing that since 1991, the number of students graduating from high school has dropped by seven points.[131] It was reported that school officials were actually relieved that the figures were not lower.[132] Some of the factors contributing to the decrease were the "rising poverty among Denver families and the flight of the middle class from the schools."[133]

In July of 1995, Colorado passed their version of a concurrency management system.[134] The standards established for classrooms were an average of twenty-five students, and limits were set at 715 students per elementary school, 1238 per middle school, and 2150 per high school.[135] Finally, if developers fail to satisfy the above criteria, their building applications could be denied or economic sanctions could result.[136]

In Williamson County, Tennessee, residents have become disillusioned with their recent growth since Saturn moved its company headquarters into Spring Hill in 1990.[137] While the "[g]rowth has brought wealth to the Southeast . . . it also has brought traffic, bursting schools, higher taxes and an uneasy relationship between longtime residents and newcomers attracted by the promise of prosperity."[138] However, Williamson County has handled some aspects of growth better than other areas by building thirteen new schools and funding the preservation of historic buildings.[139] Still, many oldtimers remain disheartened when they remember the historic barns and rolling pastures that once made up the county's landscape.[140]

In conclusion, it is evident that the growth explosion occurring throughout the United States is causing severe overcrowding, especially in

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130. *Id.*

131. Romel Hernandez, *Graduation Rate Sparks Call for Reform: 67.8% Figure Concerns Denver School Officials, Who Say They're Relieved It Didn't Drop Further*, ROCKY MTN. NEWS, Dec. 1, 1994, at 4A.

132. *Id.*

133. *Id.*

134. Shelley Gonzales, *Douglas Commission Oks Service Rules Before the Bulldozers Appear, the Developer Must Show Project Will Have No Adverse Effects*, ROCKY MTN. NEWS, Aug. 1, 1995, at 14A.

135. *Id.*

136. *Id.*

137. Jaffe & Binkley, *supra* note 75, at S1.

138. *Id.*

139. *Id.*

140. *Id.*

the school system. Something must be done—and quickly. If educators and community members unite to form programs, as did St. Louis, students will benefit tremendously. Moreover, by adding schools to the list of requirements of concurrency, states will be more apt to manage their growth before the dilemma intensifies. While the problem of overcrowding cannot be rectified overnight, concurrency in the school arena is one way to ensure that enough schools will be built to meet the demand in the first place. In doing so, the quality of life for those involved should also be elevated.

IV. GROWTH MANAGEMENT AND THE ENDANGERED SPECIES ACT

The Endangered Species Act of 1973 is evolving as a meaningful constraint on land use development.[141] Growth management relates to the ESA, in that its purpose is to preserve and conserve wildlife habitat, water resources, park land, and roads.[142] Therefore, a major component of growth management requires consideration of wildlife[143] and their existing ecosystems.[144]

Although Florida has not endured the same extent of ESA scrutiny as California,[145] the area of North Key Largo[146] has met with adversity in the generating of adequate biological data.[147] The site of projected development is the habitat for the Key Largo Woodrat and the Key Largo Cotton Mouse.[148] Insufficient available resources by local governments and small developers may be contributing factors to the origination of problems.[149] Their ability to properly research and prepare the necessary

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141. Craig A. Arnold, *Conserving Habitats and Building Habitats: The Emerging Impact of the Endangered Species Act on Land Use Development*, 10 STAN. ENVTL. L.J. 1, 1 (1991).

142. Telephone Interview with Jim Antista, General Counsel of the Florida Game & Fresh Water Fish Commission (July 27, 1995).

143. *Id.*

144. Arnold, *supra* note 141, at 5 (citing 16 U.S.C. § 1531(b) (1988)).

145. The first area in the United States subject to a Habitat Conservation Plan ("HCP") was the development of the San Bruno Mountain in California, and it serves as a model in evaluating future HCPs. *Id.* at 24.

146. This area is "a barrier island in the northern Florida Keys." J.B. Ruhl, *Regional Habitat Conservation Planning Under the Endangered Species Act: Pushing the Legal and Practical Limits of Species Protection*, 44 SMU L. REV. 1393, 1405 (1991). In 1989, an HCP consisting of twelve miles of hardwood hammock forest island habitat was developed by the Growth Management Division of Monroe County. *Id.* at 1405-06.

147. Arnold, *supra* note 141, at 29.

148. *Id.* at 28-29.

149. *Id.* at 29.

comprehensive reports for an incidental taking permit and an HCP was impaired.[150] However, various rigid requirements imposed by the ESA correspond to Florida's environmental statutes and regulations, which implies a "pre-ESA check" on growth in environmentally susceptible areas.[151]

Currently, the Clinton Interior Department is working with landowners in order to devise HCPs specifically designed to suit both the needs of wildlife and the landowner.[152] If these plans become widely accepted, they will offer owners greater management flexibility, and simultaneously safeguard the endangered species. Said HCPs provide a mechanism under the ESA by which developers may receive incidental taking[153] permits.[154] The Department of Committee Affairs has the authority to require such set-asides of habitat.[155] This mitigation program relates to "incidental [taking] permits"[156] under the section 10(a) provision.[157] Regarding these conservation areas or reservations, counties have an affirmative responsibility to designate such viable areas for development.[158]

For example, but for the woodrat, if a contractor could develop an area, such a permit may be granted if the taking itself does not jeopardize the survival of the species and alternative measures will not offset the damage.[159] This balance between conservation and development appears to protect the species, as well as allow for continued growth of the land. Thus,

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150. *Id.*

151. *Id.*

152. Eric Pryne, *High Court's Decision on Habitat Protection: Ruling of the Decade?*, THE SEATTLE TIMES, Jan. 8, 1995, at B1.

153. *See generally* Babbitt v. Sweet Home Chapter of Communities for a Great Oregon, 115 S. Ct. 2407, 2412 (1995) (holding the word "harm" to include habitat modification). The majority also reasonably construed Congress' intent as prohibiting indirect, as well as direct, takings of the land used by wildlife. *Id.* at 2408. Although the landmark ruling of *Sweet Home* is a victory for environmentalists, the future of the ESA may run into difficulty since the Republican-run Congress is scheduled to rewrite the act. Brent Walth, *An Environmental Landmark*, PORTLAND OREGONIAN, June 30, 1995, at A1.

154. Telephone Interview with Jim Antista, *supra* note 142.

155. *Id.*

156. *Id.*

157. Arnold, *supra* note 141, at 13. "Incidental take" is defined by the Fish & Wildlife Service ("FWS") as a taking resulting from, but "not the purpose of, an otherwise lawful activity." *Id.* at 14 (citing 50 C.F.R. § 402.02 (1990)).

158. Telephone Interview with Jim Antista, *supra* note 142.

159. *Id.*

saving and protecting endangered species is a national concern.[160] However, with adequate participation at the state level, successful remedies may cure ailments and act as models for other states.[161]

A. *Habitat Depletion in North Key Largo*

North Key Largo is comprised of 12,000 acres of mangrove wetlands and hardwood hammock.[162] Enclosed by park land, it is situated in close proximity to one of the greatest reef systems in existence today.[163] The island and adjacent islands are facing critical loss of habitat due to rapid development.[164] This has resulted in a depleted habitat for the various endangered species[165] including the woodrat, cotton mouse, Schaus swallowtail butterfly, American crocodile, and wading birds, such as the little blue heron, ospreys, and the snowy egret.[166]

B. *Extraordinary Measures in Protecting the Key Deer*

An example of local governments successfully taking part in a rescue program for endangered species involves the Key Deer.[167] These deer are found in the lower Florida Keys, primarily on Big Pine Key.[168] The Key Deer is a small subspecies of the Virginia white-tailed deer[169] which gained notoriety in 1934, when a well-known biologist and artist, J.N.

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160. *Senate Subcommittee of Environment and Public Works Hearing of Water, Fish, Wildlife, and the Endangered Species Act* (C-SPAN television broadcast, July 13, 1995) (statement of Bruce Babbitt, Secretary of the Interior).

161. *Id.*

162. Ann Banks, *Conscience of the Keys: Vietnam Veteran Ed Davidson Thought His Fighting Days Were Over. Then Came the Battle to Save North Key Largo*, SUN SENTINEL, July 22, 1990, at 6.

163. *Id.*

164. Telephone Interview with James Bell, Interpretative Specialist for the Florida Keys National Wildlife Refuges (July 28, 1995).

165. *Id.*

166. Telephone Interview with Jim Antista, *supra* note 142.

167. Jeffrey Schaeffer, *Local Government and the Protection of an Endangered Species: The Florida Key Deer*, ENDANGERED SPECIES UPDATE, Sept. 1988, at 1, 1.

168. Mary Tebo, *Florida Key Deer: Can the Florida Key Deer Be Saved?*, FLA. WILDLIFE, Jan.-Feb. 1990, at 26, 26. Big Pine Key supplies stable sources of fresh water and its pine/palm communities and tropical hardwood hammocks supply suitable food. *Id.* at 27.

169. Schaeffer, *supra* note 167, at 1.

"Ding" Darling, portrayed the predicament of the Key Deer in a national cartoon.[170]

In 1957, a bill was passed by Congress which created the National Key Deer Wildlife Refuge.[171] However, for the past ten years, their death rate has risen by sixty to sixty-five deer annually.[172] Currently, approximately 250 to 300 Key Deer remain in the area.[173] The following factors have contributed to their demise: road deaths, disease, inappropriate nutrition, social disorders, and stress.[174] Additionally, development alters their natural environment which, in turn, reduces habitat quality.[175] The FWS, in connection with conservation groups, has endeavored to obtain acreage to add to their refuge.[176] Also, refuge personnel employed various land management procedures, such as designated burning, which intensify and promote the native vegetation growth.[177]

Monroe County executed an innovative land use plan on September 15, 1985, which emphasized improvements for safeguarding the deer and their habitat.[178] Certain bans on the development of wetlands were instituted along with the requirement that landowners reserve vital parcels of their land in a natural state.[179] In addition, residential density requirements were changed to limit growth and fences were reconstructed so as not to trap and entangle deer.[180]

It appears clear that local governments should share responsibility with state and federal agencies in protecting threatened and endangered species.[181] The distribution of building permits by local governments gives them jurisdiction over habitats.[182] The dilemma of the Key Deer may be viewed as an illustration whereby local governments initiate programs for the continued survival of such threatened species.

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170. Tebo, *supra* note 168, at 27. Specifically, the Key Deer were shown fleeing from poachers and large dogs. *Id.*

171. *Id.*

172. Dan Keating, *Spots Before Your Eyes on Big Pine Key: Deer Babies Arrive Late This Year*, MIAMI HERALD, Sept. 1, 1993, at 1B.

173. *Id.*

174. Rick Sullivan, *Killing Wildlife with Kindness*, THE SKIMMER, Fall 1988, at 1, 1.

175. Tebo, *supra* note 168, at 27.

176. *Id.*

177. *Id.*

178. Schaeffer, *supra* note 167, at 3.

179. *Id.*

180. *Id.*

181. *Id.* at 1.

182. *Id.*

V. FLORIDA'S CONNECTION TO THE ENVIRONMENTAL PROTECTION AGENCY AND THE UNITED STATES ARMY CORPS OF ENGINEERS

The EPA and the COE are uniting to preserve and manage prevailing wetlands.[183] The information obtained from such "ecologically high value" areas is gathered through ADID.[184] ADID[185] is a planning mechanism which permits the EPA and the COE to collaborate.[186] The information is then published and made accessible to the managed community in order to countervail future ecological impacts from potential development in low quality wetlands.[187]

Because wetlands are viable ecosystems, the EPA is interested in conducting studies where the strain of urban development clashes with the protection and conservation of the wetlands.[188] The EPA is committed to working with local governments, state governments, and environmental and conservation groups.[189] In certain circumstances, the EPA will also interact with private organizations.[190]

Regarding human growth, Florida's population is increasing at a projected rate of sixteen million by the year 2000.[191] Over the last fifty years, more than eight million acres of forest and wetland habitats (24% of the state) were appropriated in order to adjust to such human demands.[192] Therefore, if plant and animal populations are to survive as a result of these drastic alterations, habitats able to withstand future population increases must be identified and preserved at an early stage.[193]

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183. Hughes, *supra* note 11, at 1.1. Such collaboration entails execution of section 404 of the Clean Water Act which requires a permit subsequent to conducting projects on wetlands. *Id.*

184. *Id.*

185. ADID programs in Florida include: the Northeast Shark River Slough (East Everglades), West Broward County, Southwest Biscayne Bay in Dade County, St. John's Forest in St. John's County, the Florida Keys, and Rookery Bay in Collier County. *Id.* at 1.3-1.5.

186. *Id.*

187. Hughes, *supra* note 11, at 1.3-1.5.

188. *Id.* at 1.6.

189. *Id.*

190. *Id.*

191. James Cox, Identification of Important Habitat Areas in Florida 2.1 (Mar. 18, 1994) (unpublished manuscript, on file with the Environmental and Land Use Law Section Public Interest Representation Committee).

192. *Id.*

193. *Id.*

Although they are not prescribed in rule form, the concepts of cumulative and secondary impacts have been notable regarding wetland permitting.[194] Cumulative impacts are those "of a similar nature in the same geographical area to those at issue in a specific project."[195] In addition, this type of impact can be anticipated "as a result of other, unrelated projects."[196] Consideration of these impacts was the result of a Department of Environmental Regulation ("DER") policy to ensure that individuals reviewing the permits take environmental effects into account where the permit functions as a precedent for corresponding permits in the future.[197]

Secondary impacts are those anticipated to follow as a result of the project at issue.[198] However, they are not the immediate result of the contemplated project.[199] Consideration of these impacts transpired through DER non-rule policy.[200] This policy was exemplified in *del Campo v. State Department of Environmental Regulation*,[201] in which the court reversed a permitting decision where conceivable environmental impacts of an island development were declined.[202]

Wetlands are critical elements of the water resource because they act as a means of reproduction, nursery, and nourishment habitats for various species of fish and wildlife.[203] In addition, they supply significant food storage, detrital production, nutrient cycling, and recreational and water quality functions.[204] Therefore, standards of water quality in suitable

194. Peter B. Belmont, Cumulative and Secondary Impacts 3.1 (Mar. 18, 1994) (unpublished manuscript, on file with the Environmental and Land Use Law Section Public Interest Representation Committee).

195. *Id.*

196. *Id.*

197. *Id.* at 3.2.

198. *Id.* at 3.1.

199. Belmont, *supra* note 194, at 3.1.

200. *Id.* at 3.2-3.3 (citing Dougherty v. Department of Envtl. Regulation, 4 Fla. Admin. L. Rep. 1079-A (1982)) (stating DER based its classification of impacts upon presumed conditions of full development of project and upon all impacts directly or indirectly related to establishment which may include pollution repercussions).

201. 452 So. 2d 1004 (Fla. 1st Dist. Ct. App. 1984).

202. *Id.* at 1005; *see also* Environmental Confederation of Southwest Florida, Inc. v. Cape Cave Corp., 8 Fla. Admin. L. Rep. 317, 382-83 (1985) (granting a permit to construct supplementary phases of residential development using septic tanks which would generate secondary water quality impact issues on condition of installing central sewage collection system).

203. Belmont, *supra* note 194, at 3.23.

204. *Id.*

wetlands and additional surface waters is crucial to their capability of providing these operations.[205]

VI. OREGON AND VERMONT IN RELATION TO FLORIDA'S GROWTH MANAGEMENT

In the early 1970s, growth management statutes were enacted by Florida, Oregon, and Vermont, thus, shifting "regulatory power . . . to the state or regional level"[206] in order to regulate the opposing intentions of economic development and protection of the environment.[207] First, it is important to note that Florida has drawn on both Oregon and Vermont in devising sound growth management regulation. The MLDC was inspired by the Vermont statute, which later became the model to the Florida statute.[208] The PC model, influenced by Oregon, acted as the prototype for a second surge of growth management statutes across the United States during the mid-1980s through 1993.[209]

Florida and Vermont possess certain common attributes, such as demanding state or regional level consent for significant development projects which removes authoritative control away from municipalities.[210] The Florida statute also empowers "state and regional agencies to identify certain natural areas of critical concern, in which local regulations can be superseded."[211] Because both states rely heavily on tourism and have experienced a marked population increase, they endorse state supervision over growth management.[212]

The competence of significant project provisions in both states have been commended.[213] However, Florida has been criticized for its large threshold size, allowing voluminous projects to escape scrutiny.[214] While Florida's regional planning agencies ("RPAs"), including representatives from local governments, have been denounced for insufficient oversight, Vermont's regional commissions have been applauded for their citizen

205. *Id.*
206. Wickersham, *supra* note 14, at 512.
207. *Id.* at 489.
208. *Id.* at 490.
209. *Id.*
210. *Id.* at 512.
211. Wickersham, *supra* note 14, at 512.
212. *Id.* at 513.
213. *Id.* at 518.
214. *Id.*

involvement and cooperation.[215] In addition to efforts by local citizens, Vermont requires the state government to emphasize information sharing and mediation.[216]

With respect to Florida's future in growth management, the state prepared four novel plan provisions to be utilized by land development regulations ("LDRs") by December 31, 1997.[217] They are comprised of an intergovernmental coordination element ("ICE") which includes: ascertaining whether a proposed development, which may or may not constitute a DRI-scale project, would significantly impact other local jurisdictions, state or regional facilities, or resources; supplying procedures for mitigating notable extra-jurisdictional impacts in the developing jurisdiction in agreement with local plans; employing the regional planning council's dispute resolution process for controversies regarding significant impacts on suggested development; and permitting development orders to be modified for approved DRIs compatible with new plan policies on mitigation of significant impacts.[218]

With reference to the intergovernmental workings of such plans, the ICE must exhibit concern over affected local governments by being mindful of the consequences of the local plan upon such development.[219] In the fulfillment of this goal, the proposed ICE rule renders three alternatives whereby a local government may select "to work toward compatible resource and facility identification, definitions of significant impact, and mitigation standards."[220] Therefore, Florida is continually preparing for the next generation of growth by enhancing its intergovernmental affairs.

Additionally, Florida repealed its DRI program after twenty successful years which led to the supremacy of the PC model over the MLDC.[221] The PC model guarantees that all projects will be submitted to the state for review.[222] Additionally, the projects must conform to an approved local

215. *Id.* at 518-19.

216. VT. STAT. ANN. tit. 3, § 7 (1994).

217. Powell, *Managing Florida's Growth*, *supra* note 26, at 275.

218. *Id.* at 273-75.

219. Katherine Castor, New Requirements of the Intergovernmental Coordination Element of Local Government Comprehensive Plans and the Replacement of the Development of Regional Impact 1.1 (Jan. 28, 1994) (unpublished manuscript, on file with The Florida Bar Continuing Legal Education Committee).

220. *Id.* at 1.5.

221. Wickersham, *supra* note 14, at 519.

222. *Id.*

plan by the state.[223] Therefore, the trend toward state oversight of growth management activities is evident.

The planning program of Oregon was adopted in 1973[224] and dictates that all cities and counties prepare comprehensive land use plans for evaluation and endorsement, thereby, maintaining unanimity with state objectives.[225] Oregon has the oldest comprehensive state growth management program in the United States.[226] Rather than relying on direct state or regional supervision of major projects or critical areas, Oregon's statute involves oversight of local planning and zoning by the state.[227] In addition, like Florida and Vermont, Oregon demonstrated several features motivating environmental reform, such as an exceedingly increasing population growth and development, abundant natural resources, and dependence upon tourism and outdoor entertainment.[228]

Oregon is one of the legislatures to approve a state planning commission ("SPC") or advisory council.[229] A primary function of the SPC is to serve in an advisory capacity to the state government to formulate growth management goals.[230] Through distinctive membership of the SPC, success in achieving state planning laws was also realized.[231] Aiding further in Oregon's success of its SPC was a local advocacy group called 1000 Friends of Oregon which furnished vital public support.[232] This was accomplished by promoting growth management goals by applying political pressure and engaging in litigation.[233]

In contrast, Florida has a state planning agency ("SPA") called the Department of Community Affairs which answers to the governor.[234] Its current productivity is largely due to a slate of governors who can take personal credit for contributing to various planning issues.[235] Oregon's SPC serves as an example of achieving success because it does not impose

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223. *Id.*
224. *Id.* at 523 (citing Oregon State Land Use Act, 1973 Or. Laws 80 (codified as amended at OR. REV. STAT. § 197 (1993))).
225. DeGrove, *supra* note 3, at 450.
226. *Id.* at 453.
227. Wickersham, *supra* note 14, at 522-23.
228. *Id.* at 523.
229. *Id.* at 526.
230. *Id.* at 527.
231. *Id.*
232. Wickersham, *supra* note 14, at 527.
233. Johnstone, *supra* note 2, at 420 n.149.
234. Wickersham, *supra* note 14, at 527.
235. *Id.*

an administrative and financial hardship upon the state.[236] As previously mentioned, Florida also has a state growth management "watchdog" group called 1000 Friends of Florida which has survived due to exuberant support from a broadly representative board of corporate, developmental, and environmental groups.[237] Even with a severe recession and the failure of the state to finance its share of the implementation effort, this "stakeholder" affiliation remains strong.[238]

Furthermore, Oregon may be viewed as an effective model for both environmental protection and financial prosperity.[239] The "jobs-vs.-owls debate" concentrated on whether significant decreases in jobs for loggers would result from preservation of the northern spotted owl's habitat.[240] However, in April 1993, a forest plan was revealed by President Clinton which provided $1.2 billion in federal resources.[241] The purpose of this plan was to retrain forest workers during a five-year period in order to shift the economic burden away from distressed areas.[242] As a result, there has been a "quantum leap in forest management" in Oregon.[243]

For example, clear-cutting has diminished and "no-cut buffer areas around streams are commonplace."[244] This has resulted in Oregon's industry becoming more productive and resourceful.[245] However, the continued economic stability will be dependent upon individuals protecting the environment as opposed to sacrificing it.[246] Summarily, the time has come for communities to consider the accessible resources and devise alternatives for the good of the environment.[247]

Recently, Florida engaged in an unprecedented conservation agreement with a timber company.[248] The purpose was to permanently enjoin fifty

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236. *Id.*
237. DeGrove, *supra* note 3, at 448.
238. *Id.*
239. Daniel Glick, *Having Owls and Jobs Too*, NAT'L WILDLIFE, Aug.-Sept. 1995, at 9, 13.
240. *Id.* at 12.
241. *Id.*
242. *Id.*
243. *Id.* at 13.
244. Glick, *supra* note 239, at 13.
245. *Id.*
246. *Id.*
247. *Id.* at 11.
248. Michael Browning, *A Forest Forever: Deal Protects Woodland from Development*, MIAMI HERALD, Aug. 23, 1995, at 1A.

square miles of woodland in North Central Florida from development.[249] The above-mentioned area includes other parcels of land known as Alachua County's Payne's Prairie and an expansive tract of wet hammocks in Volusia County's Tomoka Wildlife Management Area.[250] These "large patches of near-wilderness will be preserved forever, both as scenery and as vital catchment areas for water flow and purification."[251]

Although logging is still permitted, the restrictions involve limiting clear-cutting to 2000 acres on each plot of land yearly and in 200-acre portions at a time.[252] Also, timber contained on wetlands may be clear-cut in fifty-acre sized portions exclusively.[253] Since these areas contain wildlife such as bald eagles, deer, wild turkeys, and various songbirds and wading birds,[254] this deal also stimulates preservation of endangered or threatened species.

The PC model introduced in Oregon requires that individual development projects be approved to conform with local plans.[255] Therefore, the state continues to supervise and oversee major projects.[256] This is also true of the smaller scale development patterns which escape the MLDC model.[257] In line with Oregon's statute, Florida and Vermont enacted their planning consistency statutes in the late 1980s.[258] The Oregon statute has persisted, in spite of three repeal attempts, and continues to prevail today[259] because of ample public support.[260] Therefore, a change in development patterns is suggested in order to satisfy environmental protection goals while still promoting economic development.[261]

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249. *Id.*
250. *Id.* at 17A.
251. *Id.*
252. *Id.*
253. Browning, *supra* note 248, at 17A.
254. *Id.*
255. Wickersham, *supra* note 14, at 547.
256. *Id.*
257. *Id.*
258. *Id.* at 522.
259. *Id.* at 524.
260. DeGrove, *supra* note 3, at 453.
261. Wickersham, *supra* note 14, at 546.

VII. EMERGENCE OF GROWTH MANAGEMENT STATUTES ACROSS THE UNITED STATES

Throughout the 1980s and 1990s, various states looked to both Florida and Oregon for approaches in fashioning their growth management strategies.[262] The following six states have recently passed growth management statutes:[263] Georgia, Maine, Maryland, New Jersey, Rhode Island, and Washington.[264] A total of nine state growth management statutes, including local planning provisions compatible with statewide goals, further exhibit the superiority of the Oregon model for state growth management laws.[265] Together, these states represent a wide array of techniques used in managing urban development through state guidance and intergovernmental coordination.[266]

Growth management programs encounter a myriad of difficulties in such areas as funding, goal coherence, division of power, and coordination of governmental entities.[267] Urban land control programs are intergovernmental in nature because governmental economic assistance is a necessity.[268] Participation from all levels of government is considerable.[269] Such intergovernmental endeavors have been successful in Oregon and favored, in terms of "operational structures," in Florida, New Jersey, and Vermont.[270]

Although the particulars of growth management statutes vary, it is a standard requirement of local governments and, in most cases, regional and state agencies, to provide plans that comply with state goals and procedures.[271] This is true in every state except New Jersey and Rhode Island.[272] Moreover, the legislation that Oregon passed in 1973 included fourteen goal statements with a subsequent addition of five coastal management goals.[273] Florida passed legislation ordering the preparation of a

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262. DeGrove, *supra* note 3, at 447.

263. Wickersham, *supra* note 14, at 525.

264. *See* sources cited *supra* notes 15-20.

265. Wickersham, *supra* note 14, at 525. These nine states include: Florida, Georgia, Maine, Maryland, New Jersey, Oregon, Rhode Island, Vermont, and Washington.

266. Douglas R. Porter, *State Growth Management: The Intergovernmental Experiment*, 13 PACE L. REV. 481, 481 (1993).

267. Johnstone, *supra* note 2, at 434.

268. *Id.* at 437.

269. *Id.*

270. *Id.* at 434.

271. Porter, *supra* note 266, at 482.

272. *Id.* at 484.

273. *Id.*

comprehensive statewide plan encompassing twenty-five topic areas comprised of goal and policy statements.[274] Also, the Maryland statute exemplifies seven "visions" which serve as guiding policies to be achieved.[275]

Some states require consent of local plans, such as New Jersey which includes specified procedures for the negotiation of growth management agreements between the state and local governments.[276] The failure of local governments to observe such requirements may result in sanctions involving denial of specific state grants.[277] In Rhode Island, the state will provide a comprehensive plan if a local government declines to do so.[278]

In Georgia, "[t]he governing bodies of municipalities and counties are authorized . . . [t]o develop . . . a comprehensive plan"[279] which executes regulations of land use compatible with such a plan.[280] Maine's statute also asserts that each municipality should provide a local growth management program.[281] In addition, participation by the citizens is encouraged by inviting public examination and commentaries in an unbiased manner.[282] This subsection aimed at obtaining a broad distribution of the following: recommendations and options, written communication of observations, public debates, dissemination of information, and interest in and rebuttal to suggestions by the public.[283]

The Washington statute requires each county to select an urban growth area or areas in order to stimulate such growth.[284] Currently, in Washington, voters are confronted with a "race against the clock and government regulations" involving the "property rights referendum."[285] In what has been called a "veiled attempt to further the Republican agenda to dismantle government," the proposed legislation would establish national standards increasing landowners' rights and decreasing governmental regulatory

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274. *Id.* at 484-85.
275. *Id.* at 485.
276. Johnstone, *supra* note 2, at 424.
277. *Id.*
278. *Id.*
279. GA. CODE ANN. § 36-70-3(1) (1995).
280. *Id.* § 36-70-3(2).
281. ME. REV. STAT. ANN. tit. 30-A, § 4324(1) (West 1994).
282. *Id.*
283. *Id.*
284. WASH. REV. CODE ANN. § 36.70A.110(1) (West 1994), *amended by* 1995 Wash. Legis. Serv. 400 (West).
285. Vincent J. Schodolski, *Property Vote Causes Split in Northwest Owners' Rights at Issue in Washington State Initiative*, CHI. TRIB., Aug. 20, 1995, at 17.

control.[286] Therefore, individuals would be able to seek reimbursement for any ensuing property loss.[287]

Specifically, state agencies, in attempting to restrict the ability of landowners to use their property as they desire, would be administered demanding tests.[288] In addition, government would have to recognize that no less burdensome alternatives exist and that the regulation is in the public's best interest.[289] However, critics state the proposal would injure all levels of government in their ability to effectively manage environmental protection.[290]

As illustrated, there is often a tug of war between the objectives of the state and local governments. This struggle combined with inherent problems tends to make the growth management process more difficult. However, it has been suggested that if the various states can minimize significant problems, they may develop into the most influential bodies of American government in their attempts to manage urban land.[291]

VIII. CONCLUSION

In summary, the future success of growth management rests upon the individual states. While growth itself is not the root of the problem, the quality of life must be maintained through concurrency requirements. It must also be emphasized that there is a drastic need for uniformity of HCPs across the United States. In working together, both environmentalists and landowners can maintain a firm grip on growth management with careful consideration placed upon the numerous threatened species. Finally, these endangered species cannot be adequately protected if we allow the degradation of their habitat to continue.

While the environmental pendulum has swung to and fro, it is sufficiently clear that time cannot be wasted in resolving the problem of growth

286. *Id.*
287. *Id.*
288. *Id.*
289. *Id.*
290. Schodolski, *supra* note 285, at 17.
291. Johnstone, *supra* note 2, at 434.

management in Florida and other states. By studying and applying the principles and guidelines which have proven to be effective, reliable, and successful, Florida can avoid the dirge of disaster. Time is of the essence.

Vanessa Steinberg-Prieto